

**ORDINANCE
(AS AMENDED)
(AS CORRECTED)
CITY OF NEW ORLEANS**

**CITY HALL: November 20, 2014
CALENDAR NO. 30,455**

NO. 26201 MAYOR COUNCIL SERIES

BY: COUNCILMEMBERS CANTRELL AND GUIDRY

AN ORDINANCE to amend and reordain Article II of Chapter 66 of the Code of the City of New Orleans, containing Sections 66-36 through 66-100, relative to the prohibition of smoking of tobacco, tobacco products, natural or synthetic marijuana, other plant products, and/or the use of electronic smoking devices within the City of New Orleans, to provide for penalties and remedies relative thereto; and otherwise to provide with respect thereto.

WHEREAS, the 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely

control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry; and According to the 2010 U.S. Surgeon General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke. According to the 2014 U.S. Surgeon General's Report, The Health Consequences of Smoking—50 Years of Progress, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually; and

WHEREAS, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen; and

WHEREAS, based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in

children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death; and

WHEREAS, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

WHEREAS, in reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks; and

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function; and

WHEREAS, studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect. After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%; and

WHEREAS, smokefree indoor air laws result in a significant reduction in fine particulate matter and improved air quality. A Grand Rapids, Michigan study that monitored six restaurants before and after implementation of the state's smokefree air law found that PM2.5 fine particulate matter was reduced by 92 percent after the law went into effect, indicating that the vast majority of indoor air pollution in all six venues was due to secondhand smoke. The results in Grand Rapids were consistent with results in Wilmington, Delaware; Boston, Massachusetts; and Western New York; and

WHEREAS, following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos." A subsequent study in Nevada, whose Clean Indoor Air Act permits smoking in designated areas of casinos, bars, and taverns, indicates that strong 100% smokefree laws are the only effective way to protect indoor air quality. The study sampled the air quality in 15 casino gaming areas and corresponding nonsmoking areas, and the results indicated that the Clean Indoor Air Act failed to protect air quality in the nonsmoking areas, including children-friendly areas; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. The Americans With Disabilities Act, which requires that

disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and

WHEREAS, the U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety; and

WHEREAS, residual tobacco contamination, or “thirdhand smoke,” from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds. Tobacco residue is noticeably present in dust throughout places where smoking has occurred. Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces,

including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion. The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and air 3EP are elevated in nonsmoking and smoking rooms of hotels that allow smoking. Air nicotine levels in smoking rooms are significantly higher than those in nonsmoking rooms of hotels that do and do not completely prohibit smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens; and

WHEREAS, the Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety; and

WHEREAS, there is no legal or constitutional “right to smoke.” Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke; and

WHEREAS, smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses; and

WHEREAS, the smoking of tobacco, hookahs, or marijuana and the use of electronic cigarettes are forms of air pollution and constitute both a danger to health and a material public nuisance; and

WHEREAS, accordingly, the City of New Orleans finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke;

NOW THEREFORE

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Article II of Chapter 66 of the Code of the City of New Orleans, containing Sections 66-36 through 66-100 thereof, be and the same is hereby amended to read as follows:

“ARTICLE II. - SMOKE FREE AIR ACT

*** * ***

DIVISION 1. - GENERALLY

Sec. 66-36. - Definitions.

Sec. 66-37. - Regulations.

Sec. 66-38. - Enforcement.

Sec. 66-39. - Construction of article.

Sec. 66-40. - Violations and penalties.

12 Sec. 66-41. - Public education.

13 Sec. 66-42. - Governmental agency cooperation.

14 Secs. 66-43—66-70. - Reserved.

15 **Sec. 66-36. - Definitions.**

16 The following words, terms and phrases, when used in this article, shall have the meanings
17 ascribed to them in this section, except where the context clearly indicates a different meaning:

18 *Bar* means an area the primary purpose of which is the selling and/or serving of alcoholic
19 beverages for consumption by guests or patrons on the premises and in which the serving of food, if
20 served at all, is only incidental to the consumption of such beverages. For purposes of this article, a
21 bar located within a restaurant is considered a restaurant.

22 *Business establishment* means any sole proprietorship, partnership, limited partnership,
23 association, joint venture, corporation, municipal corporation, non-profit, trust, franchise, enterprise,
24 or other entity, including, but not limited to, professional corporations and other entities where legal,
25 medical, dental, engineering, architectural, financial, counseling, and other professional or consumer
26 services are provided.

27 *Cigar Bar* means a bar, as defined in this Section, legally in operation that generated ten (10)
28 percent or more of its total annual gross income from the on-site sale of cigars and the rental of
29 humidors, not including sales from vending machines, for the calendar year ending December 31,
30 2014 and every year thereafter. A cigar bar does not permit the smoking of cigarettes and shall not
31 knowingly sell to or permit entrance to any person less than 21 years of age.

Department of Health means the Department of Health of the City of New Orleans or the Director's designee.

Director means the Director of the Department of Health of the City of New Orleans.

Electronic Smoking Device means any electronic product, not prescribed by a doctor, that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately.

Electronic Smoking Device Business means a business establishment in which the primary activity is the sale, manufacture, or promotion of electronic smoking device products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

Employee means any person who is employed by any employer in return for the payment of direct or indirect monetary wages or profits, or any person who volunteers his services to such employer for nonmonetary compensation.

Employer means a person or business establishment that employs the services of one or more employees.

Enclosed area means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

Gambling facility means any institution in which gaming operations are permitted to occur upon a riverboat, at the land-based casino, at a facility licensed for the operation of electronic video draw poker devices, at an eligible facility licensed for the operation of slot machines, by a licensed charitable organization, or at a pari-mutuel wagering facility or off-track wagering facility which is licensed for operation and regulated under the provisions of Chapters 4 and 11 of Title 4 and Chapters 4, 5, 6 and 7 of Title 27 of the Louisiana Revised Statutes of 1950, or any other gaming operations authorized by law.

Health care facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. Unless otherwise stated in this Chapter, this definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Hookah means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

Hookah Bar means a bar, as defined in this Section, legally in operation that generated at least ten (10) percent or more of its total annual gross income from on-site retail sales of shisha for consumption in hookahs on the premises by customers and the sale of accessories used for smoking shisha for the calendar year ending December 31, 2014 and every year thereafter. A hookah bar does

74 not permit the smoking of cigarettes and shall not knowingly sell to or permit entrance to any person
75 less than 21 years of age.

76 *Park* means any outdoor area accommodating or having facilities for rest or recreation
77 (including passive activities) or playground designed at least in part to be used by children that has
78 play or sports equipment installed or that has been designed or landscaped for play, sports, or leisure
79 activities on grounds owned, occupied or operated by the city or an agency thereof, or any similar
80 facility located on public school grounds.

81 *Place of employment* means any area under the control of an employer which employees
82 normally frequent during the course of employment, including, but not limited to, work areas,
83 employee lounges and restrooms, conference rooms, meeting rooms, classrooms, employee
84 cafeterias, temporary offices (such as trailers), hallways, and vehicles. A private residence is not a
85 place of employment within the meaning of this subdivision unless a child care, adult day care, or
86 health care facility is operated therein or unless it is a common area of a multi-unit dwelling.

87 *Private club* means an organization, whether incorporated or not, which is the owner, lessee,
88 or occupant of a building or portion thereof used exclusively for club purposes at all times, which is
89 operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose,
90 but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The
91 affairs and management of the organization are conducted by a board of directors, executive
92 committee, or similar body chosen by the members at an annual meeting. The organization has
93 established bylaws and/or a constitution to govern its activities. The organization has been granted an
94 exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Public property means any vehicle, building or other location or site within the city of New Orleans owned, leased, occupied, or operated by any of the following:

- (a) The state, including the legislative, executive, and/or judicial branches of state government.
- (b) The city or any instrumentality or agency thereof, or any other political subdivision of the state, special district, authority, commission, or agency.
- (c) Any other separate corporate instrumentality or entity of state or local government.

Public event means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

Public meeting means any meeting held in the city open to the public pursuant to R.S. 42:13.

Public place means any areas to which the public is customarily invited or permitted, or areas available to the general public in business and non-profit entities patronized by the public including, but not limited to: aquariums; adult day care facilities; banks; bars; bingo facilities; child care facilities; convention centers; educational facilities; elevators; galleries; gambling facilities; health care facilities; hotel and motel lobbies and common areas; laundromats; museums; parking structures; polling places; professional offices; public property; lobbies; hallways or common areas of apartment buildings, condominiums, trailer park facilities, nursing homes or multi-unit residential facilities; public restrooms; public transportation vehicles and facilities; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores; service lines; shopping malls; sports arenas; libraries; theaters; concert halls; waiting areas; and rooms, chambers, and places of public meeting or public assembly, including school buildings under

116 the control of an agency, board, commission, committee or council of the City of New Orleans or a
117 political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of
118 New Orleans. A private residence is not a public place within the meaning of this subdivision unless
119 a child care, adult day care, or health care facility is operated therein or unless it is a common area of
120 a multi-unit dwelling.

121 *Restaurant* means any coffee shop, cafeteria, luncheonette, sandwich stand, soda fountain,
122 kitchen, catering facility, or other eating establishment, or part of any organization, club
123 boardinghouse, or guesthouse, which gives or offers for sale food to the public, guests, employees, or
124 patrons, whether food is customarily served or consumed on or off the premises. The term
125 “restaurant” shall include a bar located within a restaurant.

126 *Retail store* means any place which, in the regular course of business, sells goods directly to
127 the public.

128 *Secondhand smoke* means smoke emitted from a lighted or heated cigar, cigarette, or pipe, or
129 any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and
130 marijuana, whether natural or synthetic, in any manner or in any form, when the smoker is not
131 inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the smoker.
132 Secondhand smoke also includes aerosol or vapor from the use of an electronic smoking device
133 emitted, in any manner or in any form, when the smoker is not inhaling, at the mouthpiece during
134 puff drawing, and when the smoker is exhaling.

135 *Service line* or *waiting area* means a queue, line or other formation of persons, whether
136 seated or standing, in which one or more persons are waiting for, providing or receiving service of
137 any kind, whether or not such service involves an exchange of consideration.

138 *Smoking* means inhaling, exhaling, burning, carrying, or possessing any lighted or heated
139 cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for
140 inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any
141 form. “Smoking” also includes the use of any oral smoking device for the purpose of circumventing
142 the prohibition of smoking in this Article.

143 *Sports arena* means any pavilion, stadium, amphitheater, gymnasium, health spa, arena,
144 swimming pool, roller or ice skating rink, bowling alley or other similar place where members of the
145 general public may assemble either to engage in physical exercise, participate in athletic competition
146 or witness sports when used for the purpose of engaging in physical exercise, participating in athletic
147 competition, or witnessing sports events.

148 *Theater* means any auditorium or building used for or designed for the primary purpose of
149 exhibiting movies, stage drama, musical recital, dance, lecture, or other similar performance.

150 *Tobacco business* means a business establishment in which the primary activity is the sale,
151 manufacture, or promotion of tobacco or tobacco products and accessories either at wholesale or
152 retail, and in which the sale, manufacture or promotion of other products is merely incidental.

153 *Tobacco product* means any product(s) that is used to consume tobacco or any product that
154 contains any tobacco leaf, including, but not limited to, cigarettes, cigars, cigarillos, blunts, snuff,
155 creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka,
156 kretek, shisha, and roll-your-own cigarettes.

157 *Tobacco retailer* means any person, retail store, or other legal entity who knowingly sells,
158 donates, distributes, or delivers to any person(s), whether or not any form of consideration is
159 provided, tobacco products.

160 *Vaping* means the use of an electronic smoking device which creates an aerosol or vapor, in
161 any manner or in any form.

162 **Sec. 66-37. - Regulations.**

163 Pursuant to Section 2-1000 of the City Code, the director of health may promulgate rules and
164 regulations in accordance with the provisions contained in this article and such other rules and
165 regulations as may be necessary for the purpose of implementing and carrying out the provisions of
166 this article.

167 **Sec. 66-38. - Enforcement.**

168 (a) The department of health shall have the power to enforce the provisions of this article. In
169 addition, designated enforcement employees of the department of property management, the
170 department of safety and permits, the department of parks and parkways, the New Orleans
171 Recreation Development Commission, the fire department, and code enforcement shall have
172 the power to enforce the provisions of this article.

173 (b) Notice of the provisions of this Article shall be given to all business establishments applying
174 for a Certificate of Occupancy from the New Orleans Department of Safety and Permits.

175 (c) Any person who desires to register a complaint under this article may do so by contacting the
176 City's 311 Service Center.

177 (d) An owner, manager, operator, or employer of an area where smoking or vaping is prohibited
178 under this Article shall direct a person who is smoking or vaping in violation of this Article
179 to extinguish or turn off the product. If the person does not stop such use, the owner,
180 manager, operator, or employer shall, if applicable, refuse service and shall immediately ask
181 the person to leave the premises.

182 (e) Notwithstanding any other provision of this Article, an employee or private citizen may bring
183 legal action to enforce this Article.

184 (f) In addition to the remedies provided by the provisions of this Section, the department of
185 health or any person aggrieved by the failure of the owner, operator, manager, or other person
186 in control of a public place or a place of employment to comply with the provisions of this
187 Article may apply for injunctive relief to enforce those provisions in any court of competent
188 jurisdiction.

189 (g) The department of health shall seek to obtain voluntary compliance with this article by means
190 of publicity and education programs, and the issuance of warnings, where appropriate.

191 **Sec. 66-39. - Construction of article.**

192 (a) Nothing in this article shall be construed to permit smoking or vaping where it is otherwise
193 prohibited by law or regulation.

194 (b) Nothing in this article shall be construed to preclude owners, operators, managers, employers
195 or other persons having control of any premises covered by this article from prohibiting
196 smoking or vaping on such premises to a greater extent than is provided by this article, in
197 accordance with applicable law.

198 (c) This Article shall be liberally construed so as to further the general purposes stated in this
199 Article and the specific purposes of the particular provisions involved.

200 (d) If any provision, clause, sentence, or paragraph of this Article or the application thereof to
201 any person or circumstances shall be held invalid, that invalidity shall not affect the other
202 provisions of this Article which can be given effect without the invalid provision or
203 application, and to this end the provisions of this Article are declared to be severable.

204 **Sec. 66-40. - Violations and penalties.**

205 (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the
206 use of premises in which smoking or vaping is prohibited pursuant to Sections 66-71 and 66-
207 72, or the designated agent thereof, to fail to comply with the requirements of Section 66-
208 38(d) and Section 66-74.

209 (b) It shall be unlawful for any person to smoke or vape in any area where smoking or vaping is
210 prohibited.

211 (c) Every person who violates subsection (a) of this section shall, for a first violation thereof, be
212 liable for a fine of not more than \$100.00; for a second violation, both of which were
213 committed within a period of 12 months, be liable for a fine of not more than \$200.00; and
214 for a third or subsequent violation, all of which were committed within a period of 12
215 months, be liable for a fine of not more than \$500.00. Every person who violates subsection
216 (b) of this section shall be liable for a fine of up to \$50.00 for each violation.

217 (d) Proceedings for violations of this article shall be initiated by issuance of an affidavit or
218 summons to appear in Municipal Court, as provided by R.S. 13:2512, or brought by the

appropriate department or agency to administrative adjudication, as provided in Chapter 6 of the City Code. When applicable, the court or hearing officer shall order abatement of the conditions constituting the violation. If a person found guilty for violating this Article can demonstrate the inability to pay the penalty imposed, that person shall be ordered in lieu of the fine, to perform community service.

(e) The penalties provided by this section shall be in addition to any other penalty imposed by any other provision of law or regulation thereunder.

(f) In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(g) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the department of health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City of New Orleans may take action to recover the costs of the nuisance abatement.

(h) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 66-41. - Public education.

The department of health shall engage in a continuing program to explain and clarify the provisions and purposes of this article and shall provide assistance to those persons who seek to comply and to those who want to stop smoking.

240 **Sec. 66-42. - Governmental agency cooperation.**

241 The department of health shall seek to encourage state and federal governmental and
242 educational agencies having facilities within the city, but not subject to the provisions of this article,
243 to establish local operating procedures which substantially conform to the requirements of this
244 article.

245 **Secs. 66-43—66-70. - Reserved.**

246 **DIVISION 2. - REGULATIONS**

247 Sec. 66-71. - Prohibition of smoking and vaping in enclosed areas.

248 Sec. 66-72. – Prohibition of smoking and vaping in unenclosed areas.

249 Sec. 66-73. - Areas where smoking and vaping are not prohibited.

250 Sec. 66-74. - Notice of prohibition of smoking and vaping.

251 Sec. 66-75. - Restrictions as to property near schools, churches, etc.

252 Sec. 66-76. - How distance measured.

253 Sec. 66-77. - Tobacco retailers prohibited in residential and park districts.

254 Sec. 66.78. - No discrimination or retaliation.

255 Secs. 66-79 - 66-100. - Reserved.

256 **Sec. 66-71. - Prohibition of smoking and vaping in enclosed areas.**

257 Except as permitted by Section 66-73, smoking and vaping shall be prohibited in all enclosed
258 areas in the following places:

259 (1) Public Property.

260 (2) Public Places.

261 (3) Private Clubs.

262 (4) Places of employment.

263 (5) Correctional facilities.

264 (6) All pre-primary, primary, and secondary school buildings providing instruction for students
265 at or below the 12th-grade level, the campuses of such schools, any buildings on the
266 campuses of such schools, and all school buses.

267 (7) All schools other than those covered in subsection (6) of this section including, but not
268 limited to, community colleges, technical training establishments, specialty schools, colleges
269 and universities.

270 **Sec. 66-72. - Prohibition of smoking and vaping in unenclosed areas.**

271 Except as permitted by Section 66-73, smoking and vaping shall be prohibited in unenclosed
272 areas in the following places:

273 (1) Within five (5) feet of entrances and operable windows of enclosed areas where smoking or
274 vaping is prohibited under Section 66-71, but not including outdoor seating or serving areas
275 of bars, restaurants, and casinos.

- 276 (2) Within twenty-five (25) feet of the entrances of enclosed public property.
- 277 (3) In and within five (5) feet of Richard & Annette Bloch Cancer Survivors Plaza.
- 278 (4) In and within five (5) feet of Lafayette Square.
- 279 (5) In all outdoor sports arenas, stadiums, recreational areas with playground equipment, and
280 amphitheaters, except when being used for concerts, fairs, farmers' markets, festivals, and
281 parades. Smoking and vaping shall also be prohibited in, and within five (5) feet of bleachers
282 and grandstands for use by spectators at sporting events.
- 283 (6) Places of employment, including, but not limited to, work areas, construction sites, temporary
284 offices such as trailers, restroom facilities, and vehicles.

285 **Sec. 66-73. - Areas where smoking and vaping are not prohibited.**

286 The following areas shall not be subject to the smoking and vaping restrictions of this article:

- 287 (1) Private homes, private residences, and private vehicles; except that this Subsection shall not
288 apply if any such home, residence, or vehicle is being used for child care or day care or as a
289 health care facility or if a private vehicle is being used for the public transportation of
290 children or as part of health care or day care transportation in which case smoking and vaping
291 are prohibited.
- 292 (2) Any tobacco business.
- 293 (3) Private and semiprivate rooms or apartments in assisted living residences that are occupied
294 by one or more persons who have all requested in writing to be placed in a room where
295 smoking or vaping is permitted; provided that smoke or vapor from such rooms or apartments

296 does not infiltrate into areas where smoking or vaping is prohibited under the provisions of
297 this Article.

298 (4) All places of employment of any manufacturer, importer, wholesaler or distributor of tobacco
299 products, of any tobacco leaf dealer or processor, and all tobacco storage facilities.

300 (5) Cigar bars.

301 (6) Hookah bars.

302 (7) Private and semi-private rooms in nursing homes and other long-term care facilities that are
303 occupied by one or more persons who have all requested in writing to be placed in a room
304 where smoking or vaping is permitted; provided that smoke or vapor from such rooms or
305 apartments does not infiltrate into areas where smoking or vaping is prohibited under the
306 provisions of this Article.

307 (8) Designated smoking or vaping sections of outdoors seating, serving areas, balconies, and
308 courtyards of bars, restaurants, and casinos.

309 (9) The sidewalks, streets, balconies, and public rights of way along Bourbon Street from Canal
310 Street to Esplanade Avenue.

311 (10) Any electronic smoking device business as defined in Section 66-36 including but not limited
312 to retail, wholesale, and manufacturing facilities primarily engaged in sales of electronic
313 smoking devices or their components.

314 (11) Convention facilities during the time such facilities are being used for professional meetings
315 and trade shows which are not open to the public that are produced or organized by tobacco

or electronic smoking device businesses or convenience store associations where tobacco products are displayed and limited to the location of such meetings or shows and during the time such facilities are used by a carnival organization, traditionally known as a krewe or a courir de Mardi Gras for the purpose of the conduct of a Mardi Gras ball and limited to the location of such ball.

- (12) Enclosed, semi-enclosed and non-enclosed areas in hotels and motels and other such similar facilities during the time these areas are being used exclusively for private functions related to professional meetings and trade shows which are not open to the public that are produced or organized by tobacco or electronic smoking device businesses, such that the areas are under the control of the sponsor or organizer of the function and where the general public may not attend.

Sec. 66-74 - Notice of prohibition of smoking and vaping.

- (a) "No smoking" signs or the international "No smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted by the owner, operator, manager, employer, or other person in control in every location where smoking or vaping is prohibited by this Article. Except as provided hereinbelow, the size, style and location of such signs shall be determined in accordance with rules and regulations that may be promulgated by the director of the department of health, but in promulgating such rules and regulations, the director shall take into consideration the concerns of the various types of establishments regulated herein with respect to the style and design of such signs. In the event such rules and regulations have not

337 been promulgated, the size, style and location of such signs shall be determined in
338 accordance with best practices relative thereto.

339 (b) The owner, operator, manager, employer, or other person in control shall remove all ashtrays
340 from any area where smoking is prohibited by this Article.

341 **Sec. 66-75. - Restrictions as to property near schools, churches, etc.**

342 It is hereby declared that the sense and policy of this section is that no tobacco retailer shall
343 be permitted to sell, donate, distribute, or deliver to any person(s), whether or not any form of
344 consideration is provided, tobacco products within 300 feet of any park, church, public library,
345 school, or any childcare facility or similar entity providing structured, organized care for youth.

346 **Sec. 66-76. - How distance measured.**

347 (a) The 300-foot distance provided for in Section 66-75 shall be measured as a person walks,
348 using the sidewalk, from the nearest point of the property line of the park, church, public
349 library, school, or childcare facility or similar entity providing structured, organized care for
350 youth, to the nearest point of the tobacco retailer.

351 (b) Any tobacco retailer lawfully operating such business prior to the adoption of Section 66-75
352 and this section shall not be affected.

353 (c) If a tobacco retailer has an interruption of the continuity of business for a period in excess of
354 six months, in order to reopen for business, the requirements set forth above must be
355 complied with.

356 **Sec. 66-77. – Tobacco retailers prohibited in residential and park districts.**

357 No tobacco retailer shall be permitted to establish or open in any residential district or park
358 and recreation district of the city as defined in the comprehensive zoning ordinance of the city, as
359 now or hereafter amended. The provisions of this section shall not be construed to apply to any
360 premises which, at the time of the passage of this section, were lawfully operating as tobacco
361 retailers.

362 **Sec. 66-78. – No discrimination or retaliation.**

363 An individual, person, entity, or business establishment subject to the smoking or vaping
364 prohibitions of this Article shall not discriminate or retaliate in any manner against a person for
365 making a complaint regarding a violation of this Article or for furnishing information concerning a
366 violation to an enforcement authority.

367 **Secs. 66-79—66-100. - Reserved.”**

1 **SECTION 2. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**
2 **ORDAINS**, This ordinance shall become effective from and after ninety (90) days of the date
3 of its adoption.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JANUARY 22, 2015

STACY HEAD
PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON JANUARY 26, 2015

APPROVED:

~~DISAPPROVED:~~ JANUARY 30, 2015

MITCHELL J. LANDRIEU
MAYOR

RETURNED BY THE MAYOR ON JANUARY 30, 2015 AT 12:40 P.M.

LORA W. JOHNSON
CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS: Brossett, Cantrell, Gray, Guidry, Head, Ramsey, Williams - 7

NAYS: 0

ABSENT: 0

RECUSED: 0

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